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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,737	12/30/2003	Freda E. Robinson	HC12U-US	2702

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AVON PRODUCTS, INC.
AVON PLACE
SUFFERN, NY 10901

EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
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1616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/748,737	ROBINSON ET AL.	
	Examiner	Art Unit	
	Sharmila S. Gollamudi	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group II, claims 13-24 in the reply filed on 3/12/07 is acknowledged. Further, applicant's election of the species polyglyceryl-3-laurate is acknowledged. It is noted for the record that applicant has also claimed this species in claim 18; however applicant has claimed it as "triglycerol laurate", which is also known as polyglyceryl-3-laurate. Therefore, the claim is not withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 depends on itself and thus the claimed limitation is indefinite. Appropriate correction is requested.

Although the examiner has not rejected claim 22 under indefiniteness, it is noted that claim 22 depends on a withdrawn composition claim and the examiner request applicant correct this.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 13-16, 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al (20030049212).

Robinson et al teach a skin care composition to treat skin and hair comprising silicone elastomers. Robinson teaches the use of “skin care products” includes powders, wipes, hair conditioners, skin treatment emulsions, and creams. See [0016]. The composition is utilized in various forms including rinse-off cleansing comprising such as shampoos. [0213].

Component (a), the silicone elastomer is utilized in the amount of 0.1-30% and preferably 2-10%. See [0075]. The silicone elastomer includes an organopolisiloxane and dimethicone/vinyl dimethicone crosspolymers. See [0087] and [0089].

The composition may be in form of an emulsion. The composition comprises component (d), water, in an amount of 0.1-95% water and may be in an emulsion form. See [0135] and [0135]. Preferably the aqueous phase is dispersed wherein the aqueous phase is in an amount of 20-90% and preferably 40-80%. [0155].

Component (b): The w/o emulsion comprises an emulsifier for dispersing the aqueous phase in an amount of 0.1-10% and has an HLB of less than 14 and preferably 4 to about 14.

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[0159]. The composition *preferably* contains the silicone emulsifier such as dimethicone copolyols. These silicone emulsifiers are typically organically modified organopolysiloxanes, including dimethicone copolyols. These materials are polydimethyl siloxanes, which have been modified to include polyether side chains such as polyethylene oxide chains, polypropylene oxide chains, mixtures of these chains, and polyether chains containing moieties derived from both ethylene oxide and propylene oxide. Note [0166] specifically. Other non-silicone containing emulsifiers including sugar esters, alkoxyated sugar esters and polyesters, alkoxyated derivatives of C1-C30 fatty acid esters, and polyglycerol esters of C1-C30 fatty acids. [0168]. If the composition is formulated as an o/w emulsions then a hydrophilic surfactant is used *preferably* non-ionic surfactants are used including alkylene oxide esters of fatty acids. [0187]. Other surfactants ethoxylated esters include PEG-30 glyceryl cocoate, sucrose cocoate, alkoxyated sugar esters, polyglycerol esters of fatty acids, Polysorbate 85, Polysorbate 20, etc. [0187]-[0192]. Robinson teaches that anionic surfactants may also be used in a combination and may further include cationic, amphoteric, and zwitterionic surfactant (component c) to provide the desired HLB. [0193]

Component (c): The preferred o/w emulsion comprises a structuring agent, which may also act as a surfactant such as stearic acid, palmitic acid, etc. [0182]-[0183]. Note these structuring agents read on additional surfactant. Robinson teaches the composition is used for cleansing and thus contains 5-10% detergent surfactant such as sodium lauryl sulfate (anionic surfactant. [0212].

Although Robinson does not exemplify a hair shampoo/conditioner composition with the claimed components, it would have been obvious to one of ordinary skill in the art at the time the

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invention was made to look to the guidance provided by Robinson et al and arrive at the instant invention. One would have been motivated to formulate the silicone elastomer composition into a shampoo or hair conditioner formulation since Robinson suggests this. Therefore, if one desired to formulate a composition to cleanse or treat the hair, one would have been motivated to formulate a hair conditioner or shampoo. Further, it should be noted that Robinson prefers the use of an ethoxylated ester. For instance, Robinson teaches preferably using silicone ester emulsifiers as the emulsifiers when formulation a w/o emulsion and using alkylene oxide esters of fatty acids when formulating a o/w emulsion.

Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al (20030049212) in view of Hourihan et al (4704271).

The teachings of Robinson et al have been set forth above. Although, Robinson teaches nonionic surfactants that are suitable include polyglycerol esters of C1-C30 fatty acids (polyglyceryl-4-isostearate), Robinson does not teach the instantly claimed ester.

Hourihan while teaching a emulsion antiperspirant teaches suitable emulsifying agent include polyglyceryl-3-isostearate, polyglyceryl-4-isostearate, polyglyceryl-3-stearate, polyglyceryl-5-stearate, polyglyceryl-4-palmitate, polyglyceryl-6-palmitate, polyglyceryl-3-laurate (also known as triglycerol laurate), polyglyceryl-3-myristate, etc. column 3, lines 55-68.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Robinson et al and Hourihan et al and utilize the instant ethoxylated ester emulsifying agent. One would have been motivated to do so since Robinson suggests the use of polyglycerol esters of C1-C30 fatty acid as suitable as suitable emulsifying agents and Hourihan teaches the instant polyglyceryl-3-laurate and the prior art's polyglyceryl-4-

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isostearate function as emulsifying agents to stabilize the emulsion. Therefore it would have been obvious for a skilled artisan to utilize any emulsifying polyglycerol esters of C1-C30 fatty acid known in the art at the time the invention was made.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 571-272-0614. The examiner can normally be reached on M-F (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Sharmila S. Gollamudi
Primary Examiner
Art Unit 1616

SSG